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ALEXANDER L. STEVAS,

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. _____

In Re the matter of
Disciplinary Proceeding
Against Hugh W. Stroh
An Attorney at Law

Petition for a Writ of Certiorari to the Washington State Supreme Court

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August 5, 1982

QUESTION PRESENTED

1. Whether the highest Court of the State can unilaterally go beyond the scope of issues certified to it for resolution and decide the same without due process hearing and without notification to all parties interested in the matter that additional issues will be resolved when deprivation of the right to practice a profession (a property right) is at issue.

2. When the highest Court of the State adopts precise rules of discpline for all attorneys, can the Court deviate from the exactness of the rules under the auspicies of its inherent authority and treat the individual attorney differently without offending federal safeguards of equal protection?

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In the Supreme Court of the United States

OCTOBER TERM, 1982

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In Re the matter of Disciplinary
Proceeding Against HUGH W. STROH,
An Attorney at Law

Petition for a Writ of Certiorari to the Washington State Supreme Court

The Petitioner Hugh W. Stroh respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of the State of Washington entered in this proceeding on May 19, 1982.

OPINION BELOW

The opinion of the Supreme Court of the State of Washington has been reported and appears in the appendix hereto as well as the Order Denying Motion to Reconsider.

JURISDICTION

The judgment and order of the Supreme Court was entered on the 19th day of May, 1982. A timely petition for rehearing *en banc* was denied on the 9th day of July, 1982, and this petition for certiorari was filed within 30 days of that date. This Court's jurisdiction is invoked under 28 USC §1254(1)(2).

STATEMENT OF THE CASE

On September 28, 1970, Hugh W. Stroh was admitted to practice law in the State of Washington. On or about March 22, 1977, Stroh was involved in an incident which resulted in a formal charge being filed against him for tampering with a witness pursuant to Revised Code of Washington section 9A-72-120(a). The charges were subsequently dismissed on Stroh's motion on the grounds that the law was unconstitutional due to vagueness.

The prosecuting attorney for King County, State of Washington filed an appeal directly to the Supreme Court of the State of Washington, the result of which resulted in a remand. Approximately two years later on April 30, 1979 a jury returned a verdict of guilty and disciplinary action ensued.

The hearing examiner for the Washington State Bar Association made several positive findings in regard to the discipline of Stroh, but concluded that disbarment was in order. The disciplinary order was appealed to the disciplinary panel of the Washington State Bar Association which reversed the conclusion of disbarment and dismissed the complaint pursuant to disciplinary rule [DR 2-103(a)(3) and DRA 1.1(a)].

Neither notice of the dismissal of the complaint nor a copy of the Board's conclusions was forwarded to the Washington State Supreme Court pursuant to DRA 5.6(d), which is set out as follows,

> "If the formal complaint is dismissed . . . the record of the proceeding shall be retained at the office of the Association."

and pursuant to DRA 3.1(b)5:

> "No technical irregularities shall affect the validity of such complaint or of any proceedings pursuant thereto."

Based on the assumption and belief that the disciplinary matter had been concluded, Stroh withdrew his criminal appeal on November 14, 1980. No further events transpired until approximately one year later when, on January 13, 1981, the prosecuting attorney discovered that the disciplinary board had dismissed the complaint against Stroh. The prosecuting attorney requested that the disciplinary board reconsider the Stroh matter and after oral argument the Board denied a motion for reconsideration whereupon the prosecuting attorney certified to the Washington State Supreme Court the following issues:

> "(a) Should the Court take cognizance of this matter either upon the petition of the prosecuting attorney of King County or upon its own motion?

(b) Do the proceedings before the disciplinary board in its order of February 22, 1980 comply with the disciplinary rules for attorneys (1) as a matter of law; and (2) as a matter of fact."

Neither issue requested the Supreme Court to undertake disciplinary action against Stroh.

On May 13, 1982, the Supreme Court promulgated an opinion which not only addressed the issues as above stated, but went beyond the scope and unilaterally disbarred Stroh. In addition, Stroh was forced, without notice, to respond at oral argument before the Washington State Supreme Court to address the issue as to what discipline was appropriate. Neither the prosecuting attorney, the attorney for the Washington State Bar Association, nor Stroh had any notice that disciplinary matters were to be considered at oral argument.

REASONS FOR GRANTING THE WRIT

1. THE DECISION OF THE SUPREME COURT TO GO BEYOND THE SCOPE OF THE ISSUES CERTIFIED TO IT ABUSED FUNDAMENTAL DUE PROCESS.

The Fourteenth Amendment of the United States Constitution states in part the following:

" . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction equal protection of the law."

The right to practice law is properly within the constitutional definition and deprivation thereof invokes due process. *In. Re Ruffalo*, 390 U.S. 544, 20 L.Ed. 2d 117, 88 S.Ct. 1222 (1968). The disbarment of Stroh under the auspices of "justice to both him and the public" offends Stroh's constitutional rights and justifies the granting of certiorari to review the order and decision of the Washington State Supreme Court. *In Re Oliver*, 333 U.S. 257; *Selling v. Radford*, 243 U.S. 46, 51.

2. UNIQUE TREATMENT OF MR. STROH OFFENDS THE "EQUAL PROTECTION RIGHTS" WHEN TESTED AGAINST THE DISCIPLINARY RULES FOR ATTORNEYS AS PROMULGATED BY THE WASHINGTON STATE SUPREME COURT.

The Supreme Court of the State of Washington adopted the disciplinary rules for attorneys on Feburary 3, 1975. As part and parcel of those rules, DRA 5.56(d) is set out as follows:

"DISPOSITION NOT REQUIRING SUPREME COURT ACTION. *If the formal complaint is dismissed* or if there is no recommendation of discipline by the Board or if the recommendation is that the respondent attorney be censured or reprimanded or the further proceedings be suspended and the censure or reprimand or suspension of proceedings is accepted by the respondent attorney, *the record of the proceedings shall be retained in the office of the Association.*"

(Emphasis added).

It goes without contest that on January 18, 1980, the disciplinary board of the Washington State Bar Association dismissed the complaint against Stroh.

"RESOLVED that the Board, having given due consideration to the record, finds that the respondent's acts and conduct in this matter did not involve moral turpitude within the meaning of DR 2-103(A)(3) and DRA 1.1(a).

"Accordingly, we hereby strike the conclusions and recommendation of the hearing officer and direct that the complaint be dismissed."

In light of the preciseness of the above rule, the Washington State Supreme Court issued a show cause order requiring Stroh to appear before it. The Supreme Court admitted that the above rule is ambiguous in nature and in light of the usage of the word "dismissal"

"To put (action or party) out of consideration; to refuse to hear further."

Webster's New Collegiate Dictionary, 3rd Edition, 4. 4. Law the Supreme Court unilaterally reinterpreted it, so that Stroh could not rely on the Bar Association's dismissal. The Court reached the aforementioned position by casting aside its own rules and concluding that they were overriden by the general structure of disciplinary action.

To treat an individual uniquely under the rules is offensive to equal protection. There is no need to cite authority for support of this position as the dogma is well established.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Washington State Supreme Court, for the court;

(1) Exceeded its authority by considering matters that were not properly before it.

(2) Proffered constitutional error by relying on an incomplete record addressing mitigating circumstances by not taking into consideration matters of mitigation occuring between the date the record was established and the hearing date.

(3) Treated Stroh differently than what their own rules prescribe.

Dated: August 5, 1982

Respectfully submitted,

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